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UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

The Paul Revere Life Insurance Company, )  
Plaintiff, )  
vs. )  
Michael K. Kelly, )  
Defendant. )

No.CV07-02629-PHX-HRH

**PLAINTIFF'S STATEMENT OF  
FACTS IN SUPPORT OF MOTION  
FOR PARTIAL SUMMARY  
JUDGMENT**

Plaintiff The Paul Revere Life Insurance Company submits this statement of facts in support of its motion for partial summary judgment, pursuant to LRCiv 56.1.

1. Snell & Wilmer provided its partners, associates, and employees health insurance, dental insurance, vision insurance, life insurance, supplemental accidental death and dismemberment insurance, death benefits, short term disability insurance, and long term disability insurance. (Snell & Wilmer NALP Form, Benefits section, Exhibit A; ERISA Form 5500s, Exhibit B)

2. Since 1981, Snell has funded the plan's disability benefit by purchasing a group long term disability (LTD) policy from Unum Life Insurance Co. of America. (Exhibit B at Snell & Wilmer Long-Term Disability Plan, Annual Return/Report of Employee Benefit Plan)

3. The LTD policy covers three classes. Class 1 includes all partners and executive directors, Class 2 includes all associates, and Class 3 includes all other employees. (Overview of Long Term Disability Plan At Snell & Wilmer, prepared by Willis Corroon, Exhibit C, at page 1)

1           4.     The LTD policy pays a monthly benefit to the participant or beneficiary if  
2 they meet the policy's definition of disability. (Snell & Wilmer LTD Policy, Exhibit D)

3           5.     The monthly benefit for the partners in class 1 was 60% of their income up  
4 to \$35,000. (Exhibit E, Snell & Wilmer Disability Income Proposal by Willis Corroon,  
5 Exhibit E at S&W000072)

6           6.     The LTD policy is renewed annually and the renewal premium is based, in  
7 large part, upon the group's loss experience. (Exhibit E, at S&W000071)

8           7.     Over the years, Snell had a poor loss experience. From 1981 to 1999,  
9 Unum paid out \$11,595,178 in claims while collecting only \$4,453,499 in premiums.  
10 (James Sinadinos Letter From Unum to Willis Corroon dated December 9, 1999, Exhibit  
11 F, at S&W000077)

12           8.     Consequently, Unum was annually forced to raise its premiums during this  
13 time. Still, this did not cover the cost of the Snell claims. (February 13, 2001 letter to  
14 Unum, Exhibit G)

15           9.     Every year, Snell looked for ways to reduce its premium increases. This  
16 included:

- 17           a.     extending the elimination period for certain classes from 90 days to 180  
18                 days (Disability Income Proposal for Snell & Wilmer, Exhibit H at page  
19                 2);
- 20           b.     removing benefit features from the policy, specifically the extended  
21                 care benefit and the recovery income protection benefit (Snell &  
22                 Wilmer Office Memorandum dated August 15, 1991, Exhibit I at 1-3;  
23                 Exhibit F at S&W000076);
- 24           c.     changing the cost of living adjustment (Exhibit H);
- 25           d.     reducing the monthly benefit (Exhibit C at S&W000021);
- 26           e.     changing the definition of total disability for certain classes (Exhibit C  
27                 at S&W000021)
- 28           f.     and changing features in the LTD policy such as an amendment that

1 limited the benefit period to two years for mental or nervous claims for  
2 Class 1 employees (Exhibit F at S&W000076).

3 10. In 1998, Snell had a 40% increase in its premium for the LTD policy.  
4 (Exhibit E at S&W000071)

5 11. Snell faced another 15% increase in its premium in 1999. (Exhibit H at  
6 S&W000031)

7 12. Snell instructed its insurance broker to negotiate with Unum and find ways  
8 to contain Snell's premiums. (Exhibits H and K)

9 13. Snell began to look for ways to reduce "the benefits to help offset the extent  
10 of the increase in rates and decrease Unum's 'exposure'." (Exhibit G)

11 14. Snell wanted to "[s]tabilize [the] cost of [the] benefit plan." (Exhibit C at  
12 S&W000022)

13 15. Snell decided to contain its LTD premiums by transferring "a large portion  
14 of the risk on [the] plan covering the Class I group (Partners) . . . to individual policies."  
15 (Exhibit G)

16 16. Snell and its broker negotiated with Unum and the Paul Revere Life  
17 Insurance Company to develop what is called a "reverse combo" plan. (Unum Summary  
18 Offer Form Renewal, Exhibit L at PRLRS00120)

19 17. Snell considered the IDI and LTD coverages under the "reverse combo"  
20 plan as "integrated." Under the "reverse combo" plan, the IDI policies provided a  
21 monthly benefit of up to \$7,500. (Exhibit K)

22 18. The first \$7,500 of monthly benefit for the partners in class 1 was  
23 transferred from the group LTD policy to individual disability income (IDI) insurance  
24 policies with Unum's sister company, The Paul Revere Life Insurance Co. The \$7,500  
25 IDI benefit was paid first – and was a dollar for dollar offset against the LTD benefit  
26 (which paid up to \$35,000 depending on the income of the partner). (Exhibits K, L and  
27 July 27 letter Exhibit M)

28 19. Snell and its broker negotiated a 35% discount off the IDI premium that

1 would otherwise be available in the open market. (Exhibits K and L)

2 20. As a condition of purchase from Paul Revere, Snell guaranteed that 100%  
3 of its class 1 partners would participate. The class 1 partners did not have any choice in  
4 the insurance company or the details of the insurance policy. "If the required  
5 participation [was] not achieved, the [Paul Revere] offer [became] void after the initial  
6 enrollment." (Exhibit J at S&W000025)

7 21. Snell negotiated and purchased these policies on behalf of the class 1  
8 partners. The class 1 partners were not involved. It also handled the enrollment and  
9 payments for its partners. (Exhibit K and N, at S&W000047)

10 22. Snell debited the class 1 partners for the contribution. (Mike Marrie e-mail  
11 to Tom Gibson dated April 21, 1999, Exhibit N, at S&W000048)

12 23. Snell paid the premium for the firm's executive director, who was a class 1  
13 participant. (Exhibit N at S&W000049)

14 24. Snell's executive director announced the change to individual disability  
15 policies in an April 2, 1999 memorandum to the partners:

16 **We have experienced significant increases in the rates for the group LTD coverage with**  
17 **UNUM Life Insurance Company (UNUM) over the past four years. All indications are these**  
18 **increasing costs will continue into the future. We have completed an extensive review of**  
19 **alternative plans and the UNUM policy is superior in benefits to any other available in the**  
20 **market. Effective April 1, 1999, the LTD coverage will be a combination of an individual**  
**policy through Paul Revere Life Insurance Company (Paul Revere) and the group coverage**  
**through UNUM. The individual coverage is being purchased to assist in stabilizing the costs**  
**relating to this benefit.**

21 (Exhibit K)

22 25. In a later memorandum, a Snell partner described the action as splitting the  
23 LTD Plan into two pieces:

24 **As you will recall, in 1999 we split our LTD Plan into two pieces. We have an individual**  
25 **policy for each partner (excluding a few partners with insurability problems) that provides a base**  
**level of benefits of \$7,500 per month. We also have the group policy.**

26 (Snell & Wilmer Office Memorandum dated February 29, 2000, Exhibit O)

27 26. By January 2002, Snell's broker advised that this change led to improved  
28 claims experience. The broker planned to use the improved loss experience to negotiate a

1 lower premium with Unum:

2 The plan design modifications in prior years and transferring part of the liability under this contract to  
3 individual policies for the Partners in 1999 have contributed to the improved claims experience.  
4 Consequently the premium amounts established based on prior year's claim experience are in need of  
adjustment.

5 (Tom Gibson letter to Jacob Brown dated January 7, 2002, Exhibit P)

6 27. Snell received consideration for its IDI policy because it achieved savings  
7 in its welfare benefit program. (*Id.*)

8 28. Michael Kelly was a partner at Snell and a participant in its employee  
9 benefit plan. (Michael Kelly LTD Claim, Exhibit Q; Michael Kelly IDI Claim, Exhibit  
10 R)

11 29. He first enrolled in the group LTD coverage in April, 1994. (Michael Kelly  
12 Income Protection Claim, Exhibit Q)

13 30. Kelly enrolled in the IDI coverage in 1999. (Michael Kelly IDI  
14 Application, Exhibit S)

15 31. On August 3, 2004, Kelly submitted a disability claim based upon chemical  
16 dependence (cocaine) and he later also claimed to be disabled because of depression.  
17 (Income Protection Claim, Exhibit T ; Claimant's Supplemental Statement dated June 6,  
18 2007, Exhibit U).

19 32. Unum has paid \$865,200 in benefits while Paul Revere has paid \$362,670  
20 in benefits to date. (Unum Screen Captures, Exhibit V)

21 33. Paul Revere continues to pay \$7,500 monthly. (January 10, 2008 letter  
22 from Paul Revere to Mr. D. Beeks, Exhibit W at page 3)

23 34. To be eligible for disability benefits, the IDI policy requires Kelly to be  
24 under "the regular and personal care of a [p]hysician which, under prevailing medical  
25 standards, is appropriate for the condition causing the disability." (Duplicate IDI Policy,  
26 Exhibit X)

27 35. In 2007 the plaintiff only saw addictionologist Michael Sucher, M.D., once  
28 in February, once in May, once in September, once in November, and once in December.



(Exhibit W at 2)

36. Dr. Sucher would like to see Mr. Kelly receive inpatient or residential chemical dependency treatment. (*Id.*)

37. Kelly has refused to follow Dr. Sucher's advice. (*Id.*)

38. If Kelly complied with Dr. Sucher's treatment recommendation, Dr. Sucher predicts Kelly would have at least an 80% likelihood of fully recovering and returning to work. (*Id.*)

39. Kelly also has seen a psychiatrist, Dr. Laura Harrington. (Laura Harrington Medical Records dated March 21, 2007, Exhibit Y)

40. In 2007, Kelly saw Dr. Harrington in March, April, twice in May, and then not for the rest of the year. (Exhibit Y; Laura Harrington medical record dated April 26, 2007, Exhibit Z; Laura Harrington medical record dated May 17, 2007, Exhibit AA; Laura Harrington medical record dated May 31, 2007, Exhibit BB).

41. Kelly often showed up late or canceled visits with Dr. Harrington. (Exhibits Y-BB; Dr. Sucher Medical Records dated September 4, 2007, Exhibit CC)

42. Because he was not complying with the policy's appropriate care requirement, Paul Revere brought this declaratory judgment action. (Exhibit DD at 3; Complaint, dkt 1)

RESPECTFULLY SUBMITTED this 19th day of May, 2008.

LEWIS AND ROCA LLP

By s/Stefan M. Palys

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Stefan M. Palys

Attorneys for Plaintiff The Paul Revere Insurance Company



**CERTIFICATE OF SERVICE**

I certify that on May 19, 2008, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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